

**BEFORE THE COMMISSION
ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND**

ROBERTO and VELIA MALESPIN)	
)	
Complainants)	
)	
vs.)	Case No. 551-0
)	
SIERRA LANDING CONDOMINIUM)	
ASSOCIATION)	
)	
Respondent)	
)	

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(I), 10B9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and other evidence of record, it is therefore this 9th day of June 2003, found, determined and ordered as follows:

BACKGROUND

Roberto and Velia Malespin own a condominium in the Sierra Landing Condominium Association. Sierra Landing Condominium Association is a condominium association that administers the condominium through a Board of Directors whose responsibilities include establishing and enforcing house rules, collection of assessments, hiring management and maintaining common elements.

On April 24, 2000, the Malespins purchased a condominium located at 11510 Bucknell Drive, Unit #101, Silver Spring, MD 20902. This unit is in the Sierra Landing Condominium and is located on the ground floor of the building. Unit #201 is located directly above it. The floorplans of each unit are different. During the conversion of the building from apartments to condominium, which occurred in 1983, the interior was redesigned and rooms of a similar type were no longer aligned over each other. The kitchen and laundry/service area in Unit #201 is directly above one of the bedrooms of Unit #101.

When the Malespins moved into their unit they discovered that noise from the upstairs unit could be heard in their unit. They found the noise very disturbing and complained to the Association's Board of Directors and to David Diamond, the owner of Unit #201. The Association investigated the complaint and determined that Unit #201 did not violate any of the Association's governing documents or house rules. Particularly, the Association found that Unit #201 complied with the requirement that each upper unit have carpet covering 80 percent of the floor area in every room and hallway, except the kitchen and bathrooms.

During the next year, the Malespins sent numerous letters to both the Association and Mr. Diamond complaining about the noise and making various demands about abating the noise. The Association and Mr. Diamond responded to the Malespins' communications in an effort to reach some resolution but they both refused to acquiesce to the demands. On December 15, 2001, the Malespins filed a complaint with the Commission on Common Ownership Communities against Sierra Landing. The Malespins did not name Mr. Diamond as a party to the complaint. In the complaint, the Malespins allege that Mr. Diamond made significant changes to the unit "without a construction permit" leading to "abusive noises."

In the complaint, the Malespins requested that the Commission order Mr. Diamond to remove "all his appliances" including "the sink, faucets, kitchen cabinets and its counter top" from above the bedroom and obtain a construction permit prior to reinstalling them elsewhere in the apartment. They further requested that Mr. Diamond "abate the noise" from his heat pump and that he install "adequate carpeting all over his apartment except the floor above our kitchen and our bathroom."

FINDINGS OF FACT

1. Roberto and Velia Malespin own a condominium unit located at 11510 Bucknell Drive, Unit #101, Silver Spring, MD 20902. This unit is part of the Sierra Landing Condominium Association.
2. Sierra Landing Condominium Association is a condominium association responsible administering the condominium through a Board of Directors. These responsibilities include, but are not limited to, establishing and enforcing house rules, collection of assessments, hiring management and maintaining common elements.

3. Sierra Landing Condominium Association was formed in 1983 when the former Blueridge Apartment complex was converted into a condominium.

DISCUSSION

The panel heard Mr. Malespin's frustration regarding the noise coming from the upstairs unit. Anybody that has ever lived under another apartment can appreciate that noise resulting from another's living habits can be annoying. However, people who live in close quarters, such as apartments and condominiums, understand that such noise will occur. Some of this will result from the mechanization of modern living including heating units, dishwashers, garbage disposals even flushing toilets. Unless the noise is excessive, it must be accepted as part of life in close condominium quarters.

The Malespins claim that Mr. Diamond's activities resulting in noise that is "abusive" and "brutalizing." However, the evidence presented at the hearing did not support this claim. The panel concludes that the noise emanating from Mr. Diamond's unit is nothing more than the results of everyday living in a modern American thin-walled, lightly-insulated condominium. In fact, the panel found Mr. Diamond's testimony that he made efforts to minimize the noise to be credible, as evidenced by the fact that Mr. Diamond has two teen-aged daughters that live with him 3 or 4 days a week, yet the Malespins had no complaints about loud music or television.

This does not diminish the Malespins' understandable angst. They purchased their condominium anticipating the quiet enjoyment of their new home. The unusual alignment of the various rooms contributed to the failure of their dream. The Malespins have, what they perceive to be, an untenable position of owning a residence with which they believe has a significant noise problem.¹ The Malespins are looking for a solution to a difficult problem; however, neither the Association nor Mr. Diamond is responsible for the fundamental cause of their problem. Perhaps the architect could have considered the noise issue in the original design, or the builder could have provided additional noise deadening insulation. Neither did, leaving the Malespins with a noise problem resulting for no fault of their own. Unfortunately for them, this forum can provide little solace.

¹ Testimony at the hearing indicated that Mr. Diamond recently replaced his heat pump. Mr. Malespin indicates that since this repair took place the noise level has been considerably better. The panel hopes this can resolve the animosity resulting from this dispute.

The Malespins did not demonstrate that either the Sierra Landing Condominium Association or Mr. Diamond violated the governing documents or house rules of the Association. Therefore, their complaint must be dismissed. Mr. Malespin said at the hearing, there should be "something in some law" that could help them. As much as the panel would like to point the Malespins to an agency that could provide them with some relief, the panel knows of no such forum.

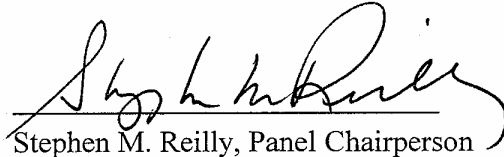
ORDER

In view of the foregoing, and based on the record, for the reasons set forth above, the Commission finds:

The complaint filed by Roberto and Velia Malespin seeking to have Sierra Landing Condominium Association require Mr. Diamond to remove his appliances is hereby dismissed, with prejudice.

The foregoing was concurred in by panel members Bruce, Cihak and Reilly.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.


Stephen M. Reilly, Panel Chairperson
Commission on Common Ownership
Communities